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# Offcase

## Suspect Class CP

Counterplan Text: The USFG should designate all individuals in the United States below the poverty line as a “suspect class.”

The counter-plan resolves any unfairness with applying retribution to people of low socio-economic status. **Datlof 12**[[1]](#footnote-1)

The second way to move toward a more coherent regime of punishment is somewhat less concrete, and relies heavily on ideas and arguments put forward in the United States Supreme Court case San Antonio Independent School District v. Rodriguez (1973). The plaintiffs in the case, Demetrio Rodriguez and several other citizens of his school district, claimed, “Texas’s system for financing public schools violated the equal protection clause of the Fourteenth Amendment because it discriminated on the basis of wealth.”20 The decision issued by the Supreme Court would focus on two initial questions: how to define a ‘suspect class,’ and whether education could be considered a fundamental right. **A suspect class is a group** of people that the **courts recognize as** particularly **likely to be subject to discrimination and thus deserving of special protection** in the eyes **of the law.**21 When granted the protection of suspect classification, the courts apply a standard of strict scrutiny in judging discrimination against the group. Strict scrutiny also is applied in any case where a fundamental right, particularly those enumerated in the Constitution, is violated. Applying a standard of strict scrutiny means that in order for a policy to be constitutional while treating the suspect class differently from other groups, it must be justified by a compelling governmental interest, be as narrowly tailored as possible toward achieving that interest, and use the least restrictive means available.22

[…]

Finally, although Justice Powell believed that classifying the poor as a suspect class was impossible, there are grounds to believe that it could and should have been done. The difficulty, Justice Powell suggests, stems from the fact that the group is “large, diverse and amorphous.”26 However, applying strict scrutiny to any class is difficult. There could be a minimum standard of wealth or access to education or living conditions that could be used as a proxy for severe and entrenched lack of opportunity that would afford certain individuals access to an additional level of legal protection. Just because fair treatment is difficult to administer does not make it justifiable to renege on a duty to provide it. Moreover, the specific reasons Justice Powell puts forth for refusing suspect classification to the poor are of questionable accuracy. He claims, “[the class of the poor] have none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.”27 The Rodriguez case, along with Murphy’ essay Marxism and Retribution, Rawls’s Theory of Justice, and endless empirical evidence show this to be false. **Those born in**to **poor households are less able to access** their **fundamental rights and** therefore exercise less **political power** than the average citizens. **They receive unequal treatment** that can be seen from the type of education they receive to the expertise of the lawyers that defend them in a court of law. Most importantly, **this is an historical inequity.** Just as AfricanAmericans, Hispanics and women have been deprived of equal treatment throughout long periods of American history, so too have those white Americans born into situations of financial destitution. While **offering the** poor the **protection of a suspect class** would be an imperfect solution, it **would alleviate** some of the **philosophical inconsistencies of applying retrib**utive punishment **in a capitalist**ic **society.** Although both retributive and utilitarian punishment theories have powerful arguments in their favor, both become difficult to defend at the margins. In their purest forms, utilitarians must defend an exclusively forward-looking system without any regard for desert of punishment whereas retributivists must defend an exclusively backward-looking system without any regard for the practical outcome. It is telling that while Bentham and Kant may have defended these extremes, modern policymakers do not speak in such universal terms. They recognize that, given the realities of the world that we live in and the inadequacies of even the best laid plans, the goal of creating an efficient and happy society for the majority does not outweigh the sacrifices that would be required of those who are left behind. Therefore, it is best to attempt to prevent individuals from falling behind in the first place, provide for those who have fallen behind, and in the meantime realize that in the marginal cases a balance of the theories of punishment is necessary in order to achieve acceptable outcomes.

## Mission Statement CP

Counterplan: Agents of the CJS ought to issue and abide by a mission statement declaring the intention of prison to be confinement, not rehab.

The counter-plan solves the whole aff. We can provide treatment for retributive reasons as part of humane punishment without intending rehab.

**Logan and Gaes 93** write[[2]](#footnote-2)

Another way to preserve **treatment programs** for prisoners would be to justify them on grounds that would be relevant even if rehabilitation were not an official goal of the system. Many programs currently offered in prisons **could be separated from the** context and **vocab**ulary **of** "**rehab**ilitation," **and** could be **justified instead in the context** and with the vocabulary **of "confinement." Despite a decline in official endorsement of** the **rehab**ilitative ideal, **many** corrections **officials** continue to **endorse programs because of their normalizing effect on the prison environment**, not because they believe in effecting a change in the inmates. In addition, many corrections officials endorse the view that some programs work for some inmates in the sense that those who want to change should receive the opportunity to change. Both of these goals— time spent constructively and the opportunity to acquire skills— still can be pursued without the baggage of the rehabilitative ideal. John DiIulio (1991:114) notes that most prison and jail administrators view correctional programs from what he calls an "institutional perspective." That is, they "evaluate programs not mainly in terms of what they do to reduce the likelihood of recidivism or otherwise affect inmates' post-release behavior but as institutional management tools.” DiIulio also suggests that **programs can be defended** in less utilitarian terms **simply as part of** what we mean by **humane conditions of confinement.** A "confinement model" of imprisonment (Logan 1991: ch. 1) would be a follow-up to the "justice model" of sentencing. The confinement model, like the justice model, is based on a purely retributive philosophy of punishment. In this philosophy, the essential purpose of imprisonment is to punish offenders–fairly and justly–through lengths of confinement proportionate to the seriousness of their crimes. Although confinement may serve other purposes in addition to justice and punishment, those are the necessary and sufficient conditions for justifying it. Thus the term confinement model may be regarded as a shorthand for a clumsier but more explicit label: the doing-justice-through-confinement-as-a-form-of-punishment model. **Under the confinement model, offenders are sent to prison as punishment, not for punishment. Thus, prisons** operated on this model **need not be harsh or internally punitive**, nor would they be insensitive to the welfare of prisoners. Coercive confinement carries an obligation to meet prisoners' basic needs at a reasonable standard of decency, so measures of health care, safety, sanitation, nutrition, and other aspects of basic living conditions are relevant. Furthermore, confinement must meet constitutional standards of fairness and due process, so not only effectiveness and efficiency, but also the procedural justice with which confinement is imposed, are important. In addition–and most relevant to this discussion–programmatic **activities** such as education, recreation, and work **can be viewed as part of the conditions of confinement, regardless of** their alleged effects on **rehab**ilitation. In short, confinement is much more than merely warehousing.

**Here is a mission statement for** a prison under **the confinement model: “The mission** of a prison **is to keep prisoners**–to keep them in, keep them safe, keep them in line, keep them healthy, and keep them busy–and to do it with fairness, **without undue suffering,** and as efficiently as possible.” Many inmate **programs** currently offered in prisons–such as work, training, education, and recreation-**can be justified under the heading of** constructive activity (**"keep them busy"**). "Constructive" activity is not defined here as "contributing to the betterment of inmates" but as activity that is, on its face, consistent with the orderly, safe, secure, and humane operation of a prison. Idleness and boredom can be viewed as wrong from a work ethic standpoint, or as unnatural because human beings are not meant to be idle, or as so fundamentally related to mischief as to be undesirable for that reason. In any case, prison programs can be defended as forms of constructive and meaningful activity and as antidotes to idleness, without invoking claims of rehabilitative effectiveness. This is not to say that it does not matter whether the programs have any rehabilitative effects; it would be fine if they did so. But when we say that the primary purpose of prison is to punish through confinement, we become more interested in the operation of these programs inside the prison gates and less concerned about their effects beyond. It is the duty of prisons to govern fairly and well within their own walls. It is not their duty to reform, rehabilitate, or reintegrate offenders into society. Though they may attempt these things, it is not their duty even to attempt these goals, let alone their obligation to achieve them. **Prisons ought not to impose upon themselves, by inclusion in a mission statement, any responsibility for inmates' future conduct**, welfare, or social adjustment. These are primarily the responsibility of the offenders themselves, and perhaps secondarily a concern of some others outside the justice system. They should not be declared the official business of prisons.

# AT Framework

## Devolves to Util

Omitted

## Threshold Deon

Omitted

# Case Turns

1. TURN – focus on rehab as an ideal masks coercive state power.

**Logan and Gaes 93** write[[3]](#footnote-3)

Proponents believe that rehabilitation programs reduce the harshness of imprisonment by softening and humanizing the prison environment. But what if this effect is more apparent than real? What if **prisons merely pay lip service to the ideal of rehab**ilitation **and create** what amounts to **a facade** of fine-sounding programs **that masks the harsh reality of doing time? Might this** approach not **reduce pressure** from the public **for real reform? A veneer of good intentions could undermine** the vigilance and the **restraint of power** that we need to maintain a system of just punishment. Rather than softening the pains of imprisonment, the rehabilitative goal may even add injustice to injury because it encourages individualized treatment, which undermines consistency and fairness. Individualized treatment requires discretion, which lends itself to abuse in the form of arbitrary and capricious distinctions. In pursuit of rehabilitation, offenders who have committed similar wrongs often are treated differently because of differences in personality, background, and social skills. Furthermore, when rehabilitative treatment is defined as an official goal of the agents and institutions of authority, then treatment, too, becomes paternalistic and authoritarian. The result is cynicism and resistance on the part of the intended beneficiaries. If our goal is to reform the conditions of life inside prisons, it is better to do so directly than under the rubric of rehabilitation. The direct approach has less chance of backfiring.

2. TURN – rehab causes paternalism. **Logan and Gaes 93** write[[4]](#footnote-4)

Proponents believe that rehabilitation programs reduce the harshness of imprisonment by softening and humanizing the prison environment. But what if this effect is more apparent than real? What if prisons merely pay lip service to the ideal of rehabilitation and create what amounts to a facade of fine-sounding programs that masks the harsh reality of doing time? Might this approach not reduce pressure from the public for real reform? A veneer of good intentions could undermine the vigilance and the restraint of power that we need to maintain a system of just punishment. Rather than softening the pains of imprisonment, **the rehab**ilitative **goal may even add injustice** to injury **because it encourages individualized treatment, which undermines consistency and fairness.** Individualized treatment requires discretion, which lends itself to abuse in the form of arbitrary and capricious distinctions. **In pursuit of rehab**ilitation, **offenders** who have committed similar wrongs often **are treated differently because of differences in personality**, background, **and social skills.** Furthermore, **when rehab**ilitative treatment **is defined as an official goal** of the agents and institutions of authority, then **treatment**, too, **becomes paternalistic and authoritarian.** The result is cynicism and resistance on the part of the intended beneficiaries. If our goal is to reform the conditions of life inside prisons, it is better to do so directly than under the rubric of rehabilitation. The direct approach has less chance of backfiring.

Coercion outweighs all aff offense. **Korsgaard 86** writes[[5]](#footnote-5)

According to the Formula of Humanity, **coercion** and deception are **[is] the most fundamental form**s **of wrongdoing** to others - **the root**s **of all evil. Coercion** and deception **violate[s] the conditions of possible assent, and all actions which depend for their** nature and **efficacy on their coercive** or deceptive **character are ones that others cannot assent to. Coercion** and deception **also make[s] it impossible for others to choose** to contribute to **our ends. This** in turn **makes it impossible**, according to Kant's value theory, **for the ends of such actions to be good.** For on Kant's view "what we call good must be, in the judgement of every reasonable man, an object of the faculty of desire." (C2 60/62-63) If your end is one that others cannot choose - not because of what they want, but because they are not in a position to choose - it cannot, as the end of that action, be good. This means that in any cooperative project - whenever you need the decisions and actions of others in order to bring about your end - everyone who is to contribute must be in a position to choose to contribute to the end.

3. Criminals are morally responsible regardless of social conditions. It’s a question of second order desires. **Frankfurt 71**[[6]](#footnote-6)

A person’s will is free only if he is free to have the will he wants. This means that, in regard to any of his first-order desires, he is free either to make that desire his will or to make some other first-order desire his will instead. Whatever his will, then , the will of the person whose will is free could have been otherwise; he could have done otherwise than to constitute his will as he did. It is a vexed question just how “he could have done otherwise” is to be understood in contexts such as this one. But although this question is important to the theory of freedom, it has no bearing on the theory of moral responsibility. For **the assumption that a person is morally responsible for what he has done does not entail that the person was in a position to have whatever will he wanted.** This assumption does entail that the person did what he did freely, or that he did it of his free will. **It is a mistake**, however, **to believe that someone acts freely only when he is free to do whatever he wants** or that he acts of his own free will only if his will is free. Suppose that a person has done what he wanted to do, that he did it because he wanted to do it, and that the will be which he was moved when he did it was his will because it was the will he wanted. Then he did it freely and of his own free will. **Even supposing that he could have done otherwise, he would not have done otherwise**; and even supposing that he could have had a different will, he would not have wanted his will to differ from what it was. Moreover, **since the will that moved him** when he acted **was his will because he wanted it to be, he cannot claim that** his will was forced upon him or that **he was a passive bystander** to its constitution. Under these conditions, it is quite irrelevant to the evaluation of his moral responsibility to inquire whether the alternatives that he opted against were actually available to him.

4. TURN – Treating someone as if they aren’t culpable is immoral, whether they’re actually culpable or not. **Korsgaard 86** writes[[7]](#footnote-7)

This latter is the basis of the duties of respect. Respect is violated by the vices of calumny and mockery (MMV 466-468/131-133): we owe to others not only a practical generosity toward their plans and projects - a duty of aid - but also a generosity of attitude toward their thoughts and motives. **To treat another with respect is to treat him as if he were using his reason** and as far as possible as if he were using it well. Even in a case where someone evidently is wrong or mistaken, we ought to suppose he must have what he takes to be good reasons for what he believes or what he does. **This is not because**, as a matter of fact, **he** probably **does have** good **reason**s. Rather, this attitude is something that we owe to him, something that is his right. And he cannot forfeit it. **Kant is explicit about** this: Hereupon is founded **a duty to respect man** even **in** the logical **use of** his **reason: not to censure** someone's **errors under the name of** absurdity, **inept judgement**, and the like, but rather to suppose that in such an inept judgment there must be something true, and to seek it out. ... Thus it is also with the reproach of vice, which must never burst out in complete contempt or deny the wrongdoer all moral worth, because on that hypothesis he could never be improved either -- and this latter is incompatible with the idea of man, who as such (as a moral being) can never lose all predisposition to good. (MMV 463-464/l28-l29)12 **To treat others as ends** in themselves **is always to** address and **deal with them as rational beings.** Every rational being gets to reason out, for herself, what she is to think or to choose or to do. So if you need someone's contribution to your end, you must put the facts before her and ask for her contribution. If you think she is doing something wrong, you may try to convince her by argument but you may not resort to tricks or force. The Kingdom of Ends is a democratic ideal, and poor judgment does not disqualify anyone for citizenship. In the Critique of Pure Reason, **Kant says: Reason depends on this freedom for its very existence. For reason** has no dictatorial authority; its verdict **is** always **simply the agreement of free citizens**, of whom each one must be permitted to express, without let or hindrance, his objections or even his veto. 9 This means that there cannot be a good reason for taking a decision out of someone else's hands. It is a rational being's prerogative, as a first cause, to have a share in determining the destiny of things.

5. The turns outweigh the case. Punishing violations of freedom is the foundation of the state and therefore a prerequisite to other rights.

**Korsgaard 08** writes[[8]](#footnote-8)

Why is it permissible for others to force or coerce you to conform to the duties of justice? The Universal Principle of Justice in effect says that **the only restriction on freedom is consistency with the freedom of everyone else.** Anything that is consistent with universal freedom is just, and you therefore have a right to do it. If someone tries to interfere with that right, he is interfering with your freedom and so violating the Universal Principle of Justice. **Violations of** the Universal Principle of **Justice may be opposed by coercion for the** simple **reason that anything that hinders a hindrance to freedom is consistent with freedom**, and anything that is consistent with universal freedom is just. **It follows that rights are coercively enforceable.** Indeed, coercive enforceability is not something attached to rights; it is constitutive of their very nature (MPJ 6:232). To have a right just is to have the executive authority to enforce a certain claim. **This** in turn **is the foundation of** the executive or coercive authority of **the political state.**

Kant’s political philosophy is a social contract theory, in obvious ways in the tradition of Locke. But the differences are important. In Locke’s view, individuals have rights in the state of nature, and may enforce those rights. But **when each person** determines and **enforces his own rights the result is social disorder. Since** this **disorder is contrary to our interests, people join together into a political state**, transferring our executive authority to a government.

6. The fact that rehab could result in punishment is irrelevant. It’s the intent that makes rehab wrong. **Murphy 73**[[9]](#footnote-9):

The Kantian position on the issue of punishing the innocent, and the many ways in which the utilitarian might try to accommodate that position, constitute extremely well-worn ground in contemporary moral and legal philosophy. I do not propose to wear the ground further by adding additional comments on the issue here. What I do want to point out, however, is something which seems to me quite obvious but which philosophical commentators on punishment have almost universally failed to see-namely, that problems of the very same kind and seriousness arise for the utilitarian theory with respect to the punishment of the guilty. For a **util**itarian theory of punishment (Bentham's is a paradigm) **must** involve **justify**ing **punishment in terms of** its social results-e.g., deterrence, incapacitation, and **rehab**ilitation. **And thus even a guilty man is**, on this theory, being **punished because of the instrumental value** the action of **punishment will have in the future. He is** being used as **a means to some future good**-e.g., the deterrence of others. **Thus those** of a Kantian persuasion, **who see the importance of** worrying about **the treatment of persons as mere means, must**, it would seem, **object** just as strenuously **to** the **punishment** of the guilty **on util**itarian **grounds** as to the punishment of the innocent. Indeed the former worry, in some respects, seems more serious. For a utilitarian can perhaps refine his theory in such a way that it does not commit him to the punishment of the innocent. However, if he is to approve of punishment at all, he must approve of punishing the guilty in at least some cases. This makes the worry about punishing the guilty formidable indeed, and it is odd that this has gone generally unnoticed. It has generally been assumed that if the utilitarian theory can just avoid entailing the permissibility of punishing the innocent, then all objections of a Kantian character to the theory will have been met. This seems to me simply not to be the case.

7. TURN – rehab allows racist discretion. **MacKenzie 6:**[[10]](#footnote-10)

For many, the answer to this question was no; the officials should not be given such wide discretion. However, liberals and conservatives differed in why they wanted to limit discretion. Conservatives argued that the judges and parole boards were too lenient; they used their discretion to release predatory criminals who continued to victimize innocent citizens. Liberals argued that [And] **the discretion given to officials was coercive and ineffective**. **Because officials could not** really **tell when offenders were rehabilitated,** why should they have the power to decide when the individual should be released? If the professionals who were responsible for rehabilitation could not demonstrate that they could effectively change offenders (as the Martinson report indicated), then their authority and autonomy in establishing the length of sentences should be severely restricted so that they would have less control over people’s lives. Furthermore, they argued, the wide discretion often results in disparity and unfair sentences that are not remedied through the parole release system. **As a result of the wide discretion allotted to officials in the c**riminal **j**ustice **s**ystem, offenders with similar past histories convicted of similar crimes often served widely disparate sentences whereas those with disparate histories and crimes served similar sentences. Critics of the indeterminate sentencing system argued that **poor and minority offenders were discriminated against,** imprisoned offenders were **coerced into programs, and offenders who challenged prison conditions were denied parole.**

8. Retribution accounts for factors which mitigate culpability.

**Markel and Flanders 10**[[11]](#footnote-11)

By our lights, we can locate a few "islands of agreement" between us and the subjectivists regarding the significance of individualized experience.' 0 First, **retributivists should care about** the individual offender's **mental competence** throughout the life cycle of a crime, from commission through punishment. In this respect, a person selected for punishment must be a fit interlocutor for the communicative message of retributive punishment, a point that the U.S. Supreme Court emphasized recently." Accordingly, it is critical for state officials to have a good grasp of the offender's competence during his punishment. After all, an offender who cannot appreciate ex post the retributive deprivations of, say, liberty or property is likely not a good candidate for punishment; instead, he probably requires treatment. We might even say this competence criterion is the most basic form of subjectivity relevant for punishment. To be punished, **the offender must be an autonomous agent** (a "subject")-that is, at least capable of rationally understanding the message directed at him via punishment. **But with** respect to **offenders above that threshold** of competence, **retributivists should** reasonably **be** relatively **indifferent to the idiosyncratic** ex post preferences and varying **experiences of offenders.** Second, we agree that retributivist policymakers should be sensitive to knowledge of human psychology and social norms when crafting laws and setting sentencing policy so that coercive actions or deprivations designed to communicate condemnation do not flout the social expectations of what reasonably counts as appropriate punishment, either as a floor or as a ceiling for that offense. For example, it would be a mistake for retributive institutions to throw ticker-tape parades to communicate condemnation to the offender or express condemnation to the public.12 A retributive response must be convincingly viewable as a coercive condemnatory action by the polity and its citizens under prevailing social norms; a ticker-tape parade does not qualify as such a condemnatory action. A punishment also cannot be excessive or cruel; this would flout moral expectations in the other direction. 1 3 Nor, relatedly, can individuals (including both citizens and officials) take it upon themselves to impose in the name of punishment hardships beyond what the polity has authorized. But **these observations are** largely **unobjectionable**, if not quite banal, **within** the realm of **retributive** justice **theories.** Consequently, our "concessions" to the importance of subjectivity are minor and provide little basis for debate. Indeed, neither concession requires much tailoring of punishment to the particular experiences and capacities of each offender. We merely point out that **for each offense there will be floors** (punishment that is too tame to convey condemnation) **and ceilings** (punishment that is too harsh or excessive, including any punishment for the mentally incompetent), and that there must be some mechanism to ensure that the floors and ceilings do not crumble.

9. Retribution applies regardless of culpability. **Corlett, 2001:**[[12]](#footnote-12)

Third, Marx's words speak only to the practical application of a model of punishment, such as retributivism. They do not in the least render retributivism's justificatory status problematic. For **even if we are socialized such that we are insufficiently** **autonomous** or voluntary beings **to be held** legitimately **accountable** for what we do, fail to do, or attempt to do, **this would not count against retributivism.** For r**etributivism** does (or **need) not hold that there are** or must be **guilty parties** to be punished.7" **Rather, it** holds, among other things, that only the guilty deserve (can or must) be punished, and it **sets** the **conditions for justified punishment.** Yet **if no one satisfies the conditions** for retributive punishment, then **no one is** to be **punished**! Thus **there is nothing inconsistent between Marx**'s words on punishment **and** what is essential to **retributivism.**

# NR Permutation Frontline

The perm can’t solve and doesn’t access the net benefit. It just mixes messages which creates confusion. **Logan and Gaes 93** write[[13]](#footnote-13)

As punishment, imprisonment conveys an important cultural message, but **if the official mission** of a prison **is defined simultaneously as both punishment and rehab**ilitation **conflicting and confusing messages are transmitted both inside and outside the prison walls. Inside the walls, such a definition conveys a message of rights without responsibility.** When a prison system is mandated in its mission statement to attempt rehabilitation, or even merely to provide opportunities and resources for self-improvement, that mandate creates for inmates a legitimate claim (a right) to personally beneficial services. At the same time, **it undermines inmates' accountability by defining them**, **like children**, as insufficiently developed and disadvantaged persons for whose future behavior society must take some responsibility. Whereas imprisonment as punishment defines inmates as responsible for their past behavior, and whereas discipline within prison defines inmates as accountable for their current behavior, rehabilitation as a goal of the system defines inmates as not fully responsible for their future behavior. **Outside the walls,** linking imprisonment with rehabil**it**ation **conveys a confusing message to the general public. As punishment, the message** of imprisonment **is** "**Felonies are very wrong** acts, and those who commit them will be held to account." **But the message of** the **rehab**ilitation ethic **is "Felonies are the result of personal deficiencies** (of knowledge, skills, habits, values, temperament, motivation, personality, and so on) on the part of the individual; society must attempt to correct those personal deficiencies." That is not an appropriate message for society to construct through its institutions of punishment. Such a message depicts criminal behavior in deterministic terms and portrays offenders as objects in need of adjustment, rather than as responsible human beings who must accept the consequences of their actions. It may not actually excuse their crimes, but **it conflicts with and weakens the punishment message.**

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